

**Underground Storage Tank Cleanup Fund  
Pay for Performance Pilot Program  
Condition of Payment**

Claimant:		(the Claimant)
Site Address		(the Site)
Agency Overseeing Corrective Action		(the Regulator)

**1. Acceptance of Condition of Payment.** This Condition of Payment and Attachments A through C set forth the terms and conditions by which the Claimant agrees to perform corrective action at the Site and the State Water Resources Control Board (“Board”) agrees to accept the Claimant’s Site into the Board’s Pay for Performance pilot program and to reimburse the Claimant for such corrective action taken.

**A.** By signing this Condition of Payment, the Claimant agrees:

- (1) to perform all corrective action within the Area of Concern, as defined in Figure \_\_\_\_, in accordance with this Condition of Payment and Attachments A through C;
- (2) that the Claimant, on his or her own, or through the Claimant’s consultant, has a reasonable understanding of all relevant site characteristics within the Area of Concern, including, but not limited to, physical, chemical, and hydrogeological characteristics, and the concentrations and distribution of chemicals present, to conclude that remediation of the Site pursuant to this Condition of Payment is appropriate;
- (3) to bear all costs and expenses associated with any additional investigation of the Site that may be necessary to optimize a treatment system or to determine the cause of a failed treatment system, and that the Claimant shall not have a right of reimbursement from the Underground Storage Tank Cleanup Fund (“Fund”) for such costs and expenses;
- (4) that by entering into this Condition of Payment, the Claimant is not relieved of any legal obligations to remediate the Site in accordance with the Regulator’s requirements, regardless of whether all Constituents of Concern (“COCs”), were identified during site characterization and all “Active Remediation Targets” were attained, as those terms are defined in Section 2; and
- (5) that the Claimant’s acceptance of this Condition of Payment does not waive the right of the Fund or any existing or future regulatory authority to take any action against the Claimant, including enforcement action, with respect to the Site.

**B.** The Fund has concluded that the reimbursement payments specified when the Claimant has attained the designated Remediation Milestones, as described in Sections 4 and 16, constitute reasonable and necessary costs for corrective action.

**2. Active Remediation Targets.** The Active Remediation Targets (“ARTs”) are the concentrations to be attained for specified COCs and other requirements of this Condition of Payment, as further described in Attachment A, Section 2. The COCs and their respective

concentrations that are to be attained are listed in Table 1 of Attachment B, "Payment Schedule." The attainment of ARTs does not guarantee that the Regulator will determine that Site closure is appropriate or that no further action is required. The Claimant may seek cost pre-approval from the Fund for any additional corrective action required by the Regulator not covered by this Condition of Payment. The Fund shall reimburse eligible costs incurred for such corrective action on a time-and-materials basis.

- 3. Payment Terms.** The Claimant agrees that the total fixed price for this Condition of Payment is that price specified in Attachment B, Section 1. The Fund shall make payments to the Claimant when the Fund, after consultation with the Regulator, has determined that the Remediation Milestones described in Section 4 have been attained. Remediation Milestone Payments shall be made pursuant to the schedule described in Section 16.
- 4. Remediation Milestone.** "Remediation Milestone" means that a specified reduction in the concentrations of COCs from their baseline concentrations has been attained in designated monitoring wells through corrective action. The reduction is expressed as a percentage of the total reduction required by this Condition of Payment. The procedure for calculating the attainment of a Remediation Milestone is shown in the example provided in Attachment C. The baseline concentrations that comprise the Baseline Data and the designated monitoring wells are further described in Sections 5, 8, and 9. The Fund agrees to authorize payments in accordance with the procedures set forth in Section 16. If the Fund, after consultation with the Regulator, determines that a Remediation Milestone has been attained, then the Fund will reimburse the Claimant the percentage of the total fixed price, described in Section 3, which corresponds with the Remediation Milestone attained. If the Fund, after consultation with the Regulator, concludes that a Remediation Milestone has not been attained, then the Claimant shall not submit an invoice for that Remediation Milestone until the Claimant has demonstrated attainment to the satisfaction of the Fund. The Claimant may request the Fund Manager or the Division Chief to review any Fund decision of non-attainment of a Remediation Milestone by following the decision review procedures set forth in Article 5 of the Fund regulations.
- 5. Baseline Data.** The Baseline Data for this Condition of Payment shall consist of the results of a Baseline Sampling Event of the wells identified in Attachment A, Section 3. The Baseline Sampling Event shall be conducted to determine the baseline concentrations of the COCs. The Baseline Sampling Event shall be conducted no more than thirty (30) days after the Claimant's acceptance of this Condition of Payment. All sampling and sample handling shall be conducted in accordance with the directives issued by the Regulator. Split sampling, as described in Section 11, is required for this Baseline Sampling Event. The Claimant's results from the Baseline Sampling Event shall be provided to the Regulator and the Fund within fifteen (15) days of the Baseline Sampling Event. The Baseline Sampling Report shall contain the information described in Attachment A, Section 1.A. As explained further in Section 6, the Baseline Data shall be approved by the Fund, after consultation with the Regulator, before startup of the remediation system. Alternatively, if the remediation system is already operating, then the Baseline Data shall be approved by the Fund, after consultation with the Regulator, before this project converts to a Pay For Performance project. If more than ninety (90) days have elapsed between the date of the Baseline Sampling Event and the remediation system startup, another Baseline Sampling Event must be scheduled and conducted before system startup. Split sampling is also required for this additional Baseline Sampling Event. However, the Fund, after consultation with the Regulator, may waive the requirement to conduct another Baseline Sampling Event. The Baseline Data described in this Section are to be distinguished from any baseline data that were obtained before the

Claimant accepted this Condition of Payment. Such data obtained prior to acceptance of this Condition of Payment is identified hereinafter as “Pre-acceptance Baseline Data”.

## 6. Start Work Notice.

- A. After the Fund and the Regulator have received the Claimant’s Baseline Data, the Fund, after consultation with the Regulator, shall have the right, if exercised within fifteen (15) days of receipt of these data, to contest the Baseline Data, the timing of the Baseline Sampling Event, and/or the sampling method used. At this time the Regulator or the Fund may also decide to change the wells designated as Key or Perimeter Monitoring Wells, as provided in Sections 8 and 9, respectively.
- B. The Fund, after consultation with the Regulator, shall also have the right to require an additional round of split sampling, as prescribed by Section 11, if the results of the split sampling show a concentration difference of 100 percent or greater between the split samples when comparing the “sum of the COCs” for the wells sampled in the Baseline Sampling Event. (The method for calculating the “sum of the COCs” is described in Attachment C.) If an additional round of split sampling is required, and this additional round also shows a concentration difference of 100 percent or greater, then the Fund, after consultation with the Regulator, may require the Claimant to perform another Baseline Sampling Event. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs incurred in conducting any additional round of split sampling or Baseline Sampling Event.
- C. If the Fund, after consultation with the Regulator, agrees with the accuracy of the Baseline Data, including the reliability thereof, then the Fund will issue a “Start Work Notice” to the Claimant. If the Fund, after consultation with the Regulator, does not agree, then the Fund shall informally meet with the Claimant in a good faith attempt to address the Fund’s concerns. In the event such concerns cannot be satisfied, the Fund may terminate this Condition of Payment pursuant to Section 7.E.
- D. Unless the Fund and the Claimant agree upon other terms and conditions in writing, eligible remediation activities relating to the Scope of Work described in Section 1 of Attachment A that are incurred during Baseline Sampling and after the issuance of the Start Work Notice shall be reimbursed or paid pursuant to the terms of this Condition of Payment.

## 7. Termination

- A. The Fund may renegotiate or terminate this Condition of Payment if a comparison of the Pre-acceptance Baseline Data and the Baseline Data of the Key Monitoring Wells shows that the sum of the COCs (identified in Table 1 of Attachment B) from these wells has **decreased** fifty (50) percent or more. Alternatively, the Fund may terminate this Condition of Payment if the Baseline Data of the Key and Perimeter Monitoring Wells show that the COC concentrations of each well are at or below their respective ARTs.
- B. The Claimant may renegotiate or terminate this Condition of Payment if a comparison between the Pre-acceptance Baseline Data and the Baseline Data of the Key Monitoring Wells shows that the sum of the COCs (identified in Table 1 of Attachment B) from these wells has **increased** fifty (50) percent or more.

- C. If the Termination provision described in Subsection A or B above is invoked, the Fund's reimbursement responsibility under this Condition of Payment shall be to pay for the eligible costs of any Baseline Sampling Event conducted and any eligible costs associated with this event. Such costs shall be paid on a time-and-materials basis.
- D. If there is evidence of a new release or migration of off-site contamination onto the Site, then the Fund, after consultation with the Regulator, shall informally meet with the Claimant to discuss this alleged change in Site conditions. If the Fund, after consultation with the Regulator, agrees that Site conditions have changed in this manner, then the Fund and the Claimant may terminate or renegotiate this Condition of Payment. If the Fund, after consultation with the Regulator, does not agree with the Claimant that Site conditions have changed, then the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulation. Failing agreement under that procedure, the Claimant may terminate this Condition of Payment. If the Condition of Payment is terminated under this provision, the Fund shall reimburse the Claimant for all eligible costs incurred to date.
- E. The Fund also reserves its right to unilaterally terminate this Condition of Payment for good cause shown upon providing fifteen (15) days' written notice to the Claimant and the Regulator and detailing the cause(s) for its proposed termination. During the notice period, the Fund, after consultation with the Regulator, shall informally meet with the Claimant in a good faith attempt to address the cause(s). The notice period may be extended by mutual agreement of the Fund and the Claimant. If the cause(s) are not addressed to the satisfaction of the Fund before expiration of the original or extended (if applicable) notice period, then the proposed termination by the Fund becomes effective at that time. The Fund reserves the right to determine whether to reimburse the Claimant for any costs incurred up to the date of termination. Its reimbursement determination shall depend on the cause(s) for termination, including but not limited to, the Claimant's malfeasance or nonfeasance to comply with the terms of this Condition of Payment, and any intentional or negligent acts or omissions committed by the Claimant that the Fund has determined are contrary to law or this Condition of Payment.
- F. The Fund and the Claimant each have the right to terminate or renegotiate this Condition of Payment if an event occurs that is not within the control of the Claimant, who is affected by such event and who could not, by reasonable diligence, have avoided the event. Such an event shall be considered a "Force Majeure" event, and shall include, but not be limited to, the following: fire, flood, explosion, act of God, act of a public enemy, war, blockade, public riot, or similar catastrophe. However, before the right to terminate or renegotiate this Condition of Payment may be exercised, the Fund shall first meet with the Claimant in a good faith attempt to address the consequences of such an event. If it is decided to terminate this Condition of Payment, the Fund shall determine which costs incurred to date by Claimant shall be eligible for reimbursement based on Claimant's submittal of such costs for payment. If it is decided to renegotiate this Condition of Payment, the Payment Schedule described in Attachment B shall be amended in writing to reflect the renegotiation's outcome. Such amendment shall be deemed a part of this Condition of Payment and is hereby incorporated by this reference.
8. **Key Monitoring Wells.** The monitoring wells that are to be used to monitor the progress of the reduction in the concentrations of the COCs are identified in Attachment A, Section 4, as the "Key Monitoring Wells." Following review of the Baseline Data, the Regulator or the Fund

may decide to change the wells designated as Key Monitoring Wells by requiring new and/or different monitoring wells to be installed and sampled as Key Monitoring Wells. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional monitoring wells and conducting the associated sampling and analysis. If the Claimant disagrees with the Regulator's or the Fund's decision, the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulations.

- 9. Perimeter Monitoring Wells.** The monitoring wells that are to be used to evaluate the perimeter groundwater conditions within the Area of Concern are identified in Attachment A, Section 5, as the "Perimeter Monitoring Wells." Following review of the Baseline Data, the Regulator or the Fund may decide to change the wells designated as Perimeter Monitoring Wells by requiring new and/or different monitoring wells to be installed and sampled as Perimeter Monitoring Wells. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional monitoring wells and conducting the associated sampling and analysis. If the Claimant disagrees with the Regulator's or the Fund's decision, the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulations.
- 10. Adequacy of Monitoring Wells.** Following issuance of a Start Work Notice, if the Regulator or the Fund concludes that one or more of the Key or Perimeter Monitoring Wells is unusable (e.g., submerged well screen, no water in well, well silted in or damaged, or is otherwise unusable), then the Regulator or the Fund may require the installation and sampling of one or more replacement monitoring wells. The replacement monitoring wells shall be installed as closely as possible to the monitoring wells being replaced, designated as replacement Key or Perimeter Monitoring Wells, and included in their respective monitoring well categories. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional replacement monitoring wells and conducting the associated sampling and analysis.
- 11. Split Samples.** The Claimant shall provide a minimum of seven (7) days' written notice to the Fund and the Regulator before conducting any sampling event proposed for the development of the Baseline Data or the evaluation of the attainment of Remediation Milestones for purposes of Remediation Milestone payments. Such notice shall be provided to enable the Regulator to conduct split sampling. If split samples are taken, and the results indicate different concentration levels for any COC in one or more monitoring wells sampled, then the samples with the higher concentration levels shall be used. However, such higher concentration samples shall not be used if the sum of the COCs for the wells sampled shows a difference of 100 percent or greater between the split samples. For example, if the sum of the BTEX COCs for the wells sampled is 4500 for one split sample and 9000 or greater for the other split sample, then a second round of split sampling must be performed. The Regulator shall forward to the Claimant the invoices for all split sample work for payment. The eligible costs for split sample work that exceeds the scope of work included in the negotiated fixed price for this Condition of Payment shall be paid by the Fund on a time-and-materials basis.
- 12. Verification Sampling.** The Fund shall have fifteen (15) days from receipt of the 100% Remediation Milestone Attained report results (as described in Section 16.E.) to approve the payment request. However, the Regulator may require the installation and sampling of a reasonable number of additional monitoring wells and/or soil borings to confirm attainment of

the 100% Remediation Milestone. If such additional wells and/or soil borings are required, the Fund, after consultation with the Regulator, shall have fifteen (15) days from the receipt of the sampling results from these additional wells and/or soil borings to approve the 100% Remediation Milestone Attained payment. This Condition of Payment includes the cost for installation of one additional well. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any additional monitoring wells and/or soil borings and conducting the associated sampling and analysis. In either case, the 100% Remediation Milestone Attained payment under this Condition of Payment shall not be payable until the results from all monitoring wells confirm that the concentrations for the COCs are at or below their respective ARTs for each and every monitoring well within the Area of Concern.

**13. Laboratory Analysis.** All soil and groundwater samples must be analyzed by a California certified laboratory that is not affiliated with the Claimant or the Claimant's consultant.

**14. Finality of Condition of Payment; Fixed Price; Price Exception.** This Condition of Payment shall be final and shall not be terminated except pursuant to the terms and conditions described in Section 7 above. In addition, the total corrective action fixed price identified in Attachment B, Section 1, shall not be increased except where one or more of the situations described in Subsections B., D., and/or F. of Section 7 is present. In this event the procedures applicable to those subsections shall be followed. In all other situations the fixed price shall not be increased. These other situations include, but are not limited to: unanticipated iron fouling of a system, inadequate winterization, well clogging because of biological activity or sedimentation, increased costs, loss of utilities, and modification to the system to meet the ARTs.

**15. Changes in Constituent Levels.** The Claimant shall notify the Fund and the Regulator telephonically, with confirmation in writing, as soon as practicable after the Claimant becomes aware of any significant change in the concentrations of the COCs. For purposes of this Section, "any significant change" includes, but is not limited to, the following:

- A. The sum total of the concentrations of all COCs has increased more than thirty (30) percent from the last measured concentrations in any well.
- B. Unanticipated measurable free product is found in any monitoring well.
- C. The remediation system has been shutdown for more than a week regardless of the cause.
- D. A significantly increased risk of impact or an actual impact to sensitive receptors, such as elevated volatile organic compounds in the ambient air, in water distribution lines, or in water supply wells, has occurred.

**16. Performance Criteria and Payment Schedule.** Payments shall be made when the Fund determines that the performance criteria described below have been attained. The Claimant's written payment request to the Fund must include: (1) a report detailing the attainment of a Remediation Milestone described below and (2) a letter from the Regulator assessing whether such performance criteria have been satisfied.

- A. Start-up Milestone:** The Fund shall reimburse the Claimant the percentage set forth in Attachment B, Section 2.A., when all of the following criteria have been satisfied and reported in the “Start-up Milestone Report.”
- (1) The remediation system has been installed and is properly operating (i.e., operating in accordance with design specifications). The Claimant shall provide the Regulator with forty-eight (48) hours’ written notice to observe the system. Once the system has been observed by the Regulator to be properly operating, the Claimant shall continue to operate the system at all times until remediation is complete, unless the system is required to be shutdown. In this event, the Claimant shall document the amount of system downtime and the cause(s) of the shutdown, as required by Section 1.F.(3)(b) of Attachment A.
  - (2) As specified in Section 3 of Attachment A, groundwater samples have been taken from each Key Monitoring Well and lab results for these samples have been submitted for inclusion in the Baseline Sampling Event.
  - (3) The concentrations of the COCs in the groundwater samples taken from each Key Monitoring Well have been calculated for inclusion in the Baseline Data.
- B. 25% Milestone:** The Fund shall reimburse the Claimant the percentage set forth in Attachment B, Section 2.B., when there has been attained a 25% reduction in the sum of the COCs for BTEX from the baseline concentrations in the Key Monitoring Wells. This reduction shall be documented in the “25% Milestone Report.” **Note:** Any of the quarterly monitoring reports described in this Section 16 may serve as a Remediation Milestone report if identified as such.
- C. 50% Milestone:** The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.C., when there has been attained a 50% reduction in the sum of the COCs for BTEX from the baseline concentrations in the Key Monitoring Wells. This reduction shall be documented in the “50% Milestone Report.”
- D. 75% Milestone:** The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.D., when there has been attained a 75% reduction in the sum of the COCs for BTEX from the baseline concentrations in the Key Monitoring Wells. This reduction shall be documented in the “75% Milestone Report.”
- E. 100% Milestone Attained:** The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.E., when the ARTs have been attained in each and every monitoring well within the Area of Concern, except as otherwise provided in Section 12. The attainment of the ARTs shall be documented in the “100% Milestone Attained Report.”
- F. 100% Milestone Maintained:** The Fund shall reimburse the Claimant the remaining percentage set forth in Attachment B, Section 2.F., when the ARTs have been maintained in each and every monitoring well within the Area of Concern for a period of four (4) consecutive, quarterly sampling rounds after the remediation system has been shut down. If these levels are not maintained, the

remediation system must be re-started and operated until the ARTs are once again attained. Once the ARTs have again been attained, the remediation system shall be shut down and each monitoring well within the Area of Concern shall be monitored for four (4) more consecutive, quarterly sampling rounds. If the ARTs are again not able to be maintained following shutdown of the remediation system, the Claimant forfeits all rights to payment of this remaining percentage. Maintaining the ARTs for each monitoring well for the applicable time periods specified above shall be documented in the "100% Milestone Maintained Report."

**17. Entire Understanding.** This Condition of Payment and Attachments A through C contain the entire understanding between the Fund and the Claimant with respect to this subject matter and supersede all prior or contemporaneous written or oral negotiations and understandings. This Condition of Payment may be amended only in a writing signed by the Claimant and approved by the Fund.

**18. Authority to Sign Condition of Payment.** The person signing this Condition of Payment represents and warrants that he/she has the express authority, right, and power to sign this Condition of Payment.

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Claimant

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Date



**ATTACHMENT A**  
**REGULATORY REQUIREMENTS**

**[THIS IS ONLY AN EXAMPLE OF THE POSSIBLE REGULATORY REQUIREMENTS THAT THE REGULATORY AGENCY OVERSEEING CORRECTIVE ACTION FOR THE CLAIMANT'S SITE MAY IMPOSE ON THE CLAIMANT. BECAUSE THE TERMS AND CONDITIONS OF REGULATORY REQUIREMENTS IMPOSED WILL DEPEND ON THE OUTCOME OF NEGOTIATIONS BETWEEN THE REGULATORY AGENCY AND THE CLAIMANT AND/OR THE CLAIMANT'S CONSULTANT, THE FINAL REGULATORY REQUIREMENTS FOR THE CLAIMANT'S PFP PROJECT MAY DIFFER FROM THIS EXAMPLE.]**

- 1. Scope of Work:** This Pay-for-Performance Condition of Payment applies to the following scope of work:

**A. Baseline Sampling Report:** The Baseline Sampling Report shall document baseline conditions to be used to determine Remediation Milestones. The Baseline Sampling Report shall include the following:

- (1) A brief written discussion of sampling methodology.
- (2) A table showing the sampling results from all Key and Perimeter Monitoring Wells included in the Baseline Sampling Event. The Active Remediation Targets ("ARTs") should be referenced in this table.
- (3) A table showing the summation of the concentrations of all Constituents of Concern ("COCs") identified in Table 1 of Attachment B that are in each monitoring well.
- (4) A figure showing the location of all Key and Perimeter Monitoring Wells.
- (5) Analytical reports and field data sheets.

Note: The tables to be included in this report can be presented in any format as long as all of the requested data are presented.

**B. Remediation System Design, Construction, and Operation:** The remediation system shall be designed, constructed, and operated to achieve reduction of soil and groundwater contamination to levels at or below the ARTs specified in Attachment B, Table 1.

**C. Remediation System Startup and As-built Report:** The Remediation System Start-up and As-built Report shall include the following:

- (1) A brief written summary of the field activities performed to install and start-up the remedial system. This discussion shall include a description of all deviations from the remedial system design as presented in the approved Corrective Action Plan.
- (2) As-Built Drawings.

- (3) A table showing the influent and effluent analytical data for the soil vapor and groundwater treatment systems.
- (4) A table presenting the remedial system operation data collected during the start-up period. This table should include flow rates, vacuum applied, extraction wells in use, and any other data collected which will be used in any calculations presented.
- (5) A table presenting mass removal data for Total Petroleum Hydrocarbons as Gasoline (TPHg) and benzene. This table should include mass removal rates observed during the monitoring period and cumulative mass removed during the monitoring period.
- (6) All field data sheets and analytical reports shall be included.

Note: The above tables can be presented in any format or combination as long as all of the necessary information is presented.

**D. Monthly Operation and Maintenance (O&M) of Remediation System:**

- (1) O&M monitoring shall be consistent with the permit requirements of [*specify regulatory agency*] and all other legally required permits for the operation and maintenance of the remediation system.
- (2) Influent and effluent samples should be collected on the frequency specified by any permit to construct/permit to operate or discharge permits that are obtained for the remedial system. These samples shall be analyzed for TPHG and benzene, toluene, ethylbenzene, and total xylenes (BTEX), and methyl tert-butyl ethylene ("MTBE") in accordance with the procedures prescribed by California Air Resources Board (CARB) Method 410a. Because MTBE has not been identified as a constituent of concern for groundwater contaminant reduction, if MTBE is not detected in the initial remedial system influent samples, further laboratory analysis may be discontinued for purposes of O & M sampling.

**E. Quarterly Sampling of all Monitoring Wells:**

- (1) Except for the last monitoring round before final payment is requested, a monitoring well can be eliminated from the monitoring program if the COCs are detected at levels below the corresponding ARTs in groundwater samples for four consecutive monitoring rounds. All monitoring wells must be sampled in the last monitoring round before final payment may be requested.
- (2) Quarterly sampling shall be conducted for all Key Monitoring Wells. Quarterly sampling shall be conducted for Perimeter Monitoring Wells until total concentrations of all COCs have been reduced by 50 % from the baseline concentrations. If a Perimeter Monitoring Well meets this criterion, then its monitoring frequency can be reduced to twice a year in spring and fall.
- (3) Groundwater samples shall be analyzed for TPHg by USEPA method 8015 and for BTEX by USEPA method 8020. Groundwater samples shall be collected annually from wells \_\_, \_\_, \_\_, \_\_, and \_\_, and shall be analyzed for fuel oxygenates and additives by USEPA Method 8260.

*Please be aware that this Condition of Payment does not supersede state laws that require electronic data submittals.*

**F. O&M and Monitoring Reports:**

- (1) Reports describing O&M and monitoring shall comply with all applicable requirements of all regulatory agencies.
- (2) A copy of any reports submitted to all regulatory agencies shall be provided to the Regulator.
- (3) O&M and Monitoring Reports shall contain the following:
  - (a) A brief description of the field activities that occurred during the previous quarter.
  - (b) The amount of remedial system downtime, if any, including the cause(s) of the shutdowns.
  - (c) Any significant modifications or additions made to the remedial system and the reasons for the changes. The As-Built Drawings shall be modified accordingly.
  - (d) Figures showing the site plan, groundwater gradient maps, Rose diagrams, all on-site and off-site monitoring and remediation wells, and iso-concentration contours for TPHg and benzene.
  - (e) Time-Trend plots for TPHg and benzene in all monitoring wells and remedial system influent (*when applicable.*) These plots shall indicate the ARTs.
  - (f) Plots of cumulative mass removal of TPHg and benzene versus time.
  - (g) A Time-Trend plot of Total COCs in the wells used to generate the Baseline Data. The baseline concentrations shall be included on the plot.
  - (h) A table presenting the soil vapor sampling results (*if applicable.*)
  - (i) A table presenting the well construction details, depth to groundwater, groundwater elevation, an assessment of whether or not the well screen is submerged and analytical data for each monitoring well. This table shall reference the TL for each COC.
  - (j) A table showing the influent and effluent analytical data for the soil and/or groundwater treatment.
  - (k) A table presenting the remedial system operation data collected during the start-up period. This table should include flow rates, vacuum applied, extraction wells in use, and any other data collected which are used for any calculations presented.
  - (l) A table presenting mass removal data for Total Petroleum Hydrocarbons as Gasoline (TPHg) and benzene. This table should include mass removal rates

observed during the monitoring period and cumulative mass removed during the monitoring period.

(m) All field data sheets and analytical reports shall be included.

Note: The above tables can be presented in any format or combination as long as all of the necessary information is presented. All tables must contain all historical data.

(4) The O&M and Monitoring Reports shall be prepared quarterly and submitted to the Fund and Regulator within 45 days of the sampling event.

**2. Active Remediation Targets:** The Active Remediation Targets in this Condition of Payment are described below.

- A. The ARTs prescribed in Attachment B, Table 1, have been maintained in all monitoring wells for the time periods prescribed in the Condition of Payment.
- B. No free product is present in any Key Monitoring Well. If free product is discovered in any Key Monitoring Well, the Fund and Regulator, and other appropriate regulatory agencies, shall be notified within 24 hours.
- C. Surface waters at the Site have not been impacted. If a surface water impact is discovered, the Fund and Regulator, and other appropriate regulatory agencies, shall be notified within 24 hours.
- D. *[Describe any other Active Remediation Targets to be met.]*

- 3. Baseline Data:** A Baseline Sampling Event of the following monitoring points shall be conducted to determine the baseline concentrations of the COCs identified in Attachment B, Table 1: monitoring wells \_\_, \_\_, \_\_, \_\_, and \_\_. The Baseline Sampling Event is described in Section 5 of the Condition of Payment. The Baseline Data shall be comprised of the results from the Baseline Sampling Event. Detection limits for COCs shall be set at or below the corresponding ARTs. All sampling and sample handling shall be conducted in accordance with the directives issued by the Regulator and standard industry practices of quality assurance and quality control.
- 4. Key Monitoring Wells:** Key Monitoring Wells to assess the progress of the reduction of the concentrations of COCs shall consist of wells \_\_, \_\_, \_\_, \_\_, \_\_, and \_\_. Groundwater samples shall be analyzed for the COCs identified in Table 1 using the methods directed by the Regulator. These wells are subject to change by mutual written agreement between the Claimant and the Fund after the results of the Baseline Sampling Event are available. Any dispute regarding designation of the Key Monitoring Wells must be resolved prior to any payment being made under this Condition of Payment.
- 5. Perimeter Monitoring Wells:** Perimeter Monitoring Wells shall consist of wells \_\_, \_\_, \_\_, \_\_, \_\_, and \_\_. These wells shall be analyzed for the COCs identified in Table 1 using the methods directed by the Regulator. These wells are subject to change by mutual written agreement between the Claimant and the Fund after the results of the Baseline Sampling are available. Any dispute regarding designation of the Perimeter

Monitoring Wells must be resolved prior to any payment being made under this Condition of Payment.

6. **Constituent Reduction Monitoring:** Water sample laboratory data used to support performance criteria for payment shall show the COCs that were present during the Baseline Sampling Event. Samples must be analyzed using methods directed by the Regulator. Remediation Milestone reports shall include tables showing the concentrations of the COCs in the monitoring wells sampled and graphs showing the total reduction in the concentrations of the COCs from the baseline concentrations. The data graphed and the method of calculation shall also be provided.
7. **Site Closure:** At any time during the execution of this Condition of Payment, if the concentrations of the COCs are reduced to a level deemed acceptable for closure by the Regulator, the Fund shall conclude that the 100% Milestone Maintained Remediation Milestone, described in Section 16.F. of the Condition of Payment, has been achieved. The remaining payment shall be reimbursed upon submission to the Fund of a copy of the Regulator's closure letter and a summary of site conditions, including soil and groundwater quality data, existing as of the date of the closure letter.

**ATTACHMENT B****PAYMENT SCHEDULE**

**[THIS IS ONLY AN EXAMPLE. THE CONSTITUENTS OF CONCERN AND THE ACTIVE REMEDIATION TARGETS WILL BE ESTABLISHED BY THE REGULATORY AGENCY FOR THE SPECIFIC SITE BEING REMEDIATED, AND THE PERCENTAGES TO BE PAID FOR ATTAINING THE REMEDIATION MILESTONES SPECIFIED BELOW WILL BE ESTABLISHED BY THE FUND. BECAUSE THE TERMS ESTABLISHED FOR THE CLAIMANT'S PFP PROJECT MAY DIFFER SIGNIFICANTLY FROM THIS EXAMPLE, THE CLAIMANT SHOULD NOT RELY ON THE VALUES SHOWN AS NECESSARILY BEING REPRESENTATIVE OF THE TERMS THAT WOULD APPLY TO THE CLAIMANT'S PROJECT.]**

1. **Fixed Price:** The Claimant agrees that the total corrective action fixed price to be paid the Claimant to achieve the Active Remediation Targets specified below is:  
\$ \_\_\_\_\_.
2. **Remediation Milestone Payments:** Payments shall be made when the Fund determines that the Remediation Milestones specified below have been attained. The Payment Schedule, as described in the Subsections of Section 16 in the Condition of Payment and referenced below, and the corresponding percentages of the total price that will be reimbursed to the Claimant, are as follows:

<u>Subsection</u>	<u>Remediation Milestone</u>	<u>Payment (%)</u>
A. 16.A.	Start-up	35
B. 16.B.	25%	15
C. 16.C.	50%	15
D. 16.D.	75%	20
E. 16.E.	100% attained	5
F. 16.F.	100% maintained	10

**Table 1**

<b>Constituents of Concern ("COCs")</b>	<b>Active Remediation Targets</b>
TPHg	1,000 ppb
Benzene	100 ppb
Toluene	200 ppb
Ethylbenzene	500 ppb
Xylenes	300 ppb
MTBE	200 ppb

## Attachment C

## Sample Calculation of Attainment of Remediation Milestones

Remediation Milestones are usually set at 25%, 50%, 75%, and 100%. These percentages represent the percent reductions in the concentrations of the Constituents of Concern (“COCs”) from baseline concentrations. The reductions are expressed as a percentage of the total reductions required by the Condition of Payment. The total reductions required are the indicated Active Remediation Targets. The calculation method described below provides a rough measure of the total mass of hydrocarbons present at a site at the initiation of remediation (the baseline concentrations) and as remediation progresses. This method also allows a site to “average out” hot spots as long as there has been significant mass reduction in the concentrations of the COCs throughout the site. Although Active Remediation Targets may have been established for TPH and MTBE, normally only BTEX concentrations are used to assess completion of the 25%, 50%, and 75% Remediation Milestones.

Assume for this example that the Baseline Sampling Event yields the following results for Key Monitoring Wells 1 through 4 (all in units of ppb):

<u>COC</u>	<u>MW-1</u>	<u>MW-2</u>	<u>MW-3</u>	<u>MW-4</u>	<u>Active Remediation Targets</u>
<i>TPH</i>	<i>180,000</i>	<i>68,000</i>	<i>75,000</i>	<i>10,000</i>	<i>1000</i>
<i>MTBE</i>	<i>50,000</i>	<i>13,000</i>	<i>6,000</i>	<i>6,500</i>	<i>200</i>
B	34,000	9,800	16,000	4,800	100
T	39,000	4,600	24,000	320	200
E	3,000	3,000	970	200	500
X	15,000	9,200	5,100	510	300
Total BTEX	91,000	26,600	46,070	5,830	1,100

Add the Total BTEX concentrations calculated for each well to derive the “sum of the COCs” for BTEX for all of the Key Monitoring Wells for this Baseline Sampling Event. This addition yields a total of 169,500. Next, calculate the amount by which the baseline BTEX concentrations must be reduced to reach the Active Remediation Targets. This amount is the difference between 169,500 and 4,400 (1,100 x 4 MWs) or 165,100.

To attain the 25% Remediation Milestone, subtract 25% of the difference ( $165,100 \times 0.25 = 41,275$ ) from the total baseline BTEX concentrations ( $169,500 - 41,275 = 128,225$ ). The 25% Remediation Milestone will have been attained when Total BTEX for the four Key Monitoring Wells reaches 128,225. The 50% and 75% Remediation Milestones are calculated in a similar manner with derived values of 86,950 and 45,675, respectively.

100% Remediation Milestone Attained Calculation:

The 100% Remediation Milestone will be attained when the Active Remediation Targets have been attained for all COCs at all monitoring wells within the Area of Concern. The monitoring wells and the COCs are not averaged together as was done for the 25%, 50%, and 75% Remediation Milestone calculations. Also, no “hot spots” are allowed when performing this calculation.